

(c) In any disposition sale of a housing unit, a sale process designed to maximize the sale price will be used. However, where the sale is to a low-income Indian family, the home may be disposed of without maximizing the sale price so long as such price is consistent with a recipient's IHP. The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and these regulations.

**§ 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?**

(a) The recipient shall provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient.

(b) The recipients shall not require insurance on units assisted by grants to families for privately owned housing if there is no risk of loss or exposure to the recipient or if the assistance is in an amount less than \$5000, but will require insurance when repayment of all or part of the assistance is part of the assistance agreement.

(c) The recipient shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract.

(d) These requirements are in addition to applicable flood insurance requirements under § 1000.38.

**§ 1000.138 What constitutes adequate insurance?**

Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount that will protect the financial stability of the recipient's IHBG program. Recipients may purchase the required insurance without regard to competitive selection procedures from nonprofit insurance entities which are owned and controlled by recipients and which have been approved by HUD.

**§ 1000.139 What are the standards for insurance entities owned and controlled by recipients?**

(a) *General.* A recipient may provide insurance coverage required by section 203(c) of NAHASDA and §§ 1000.136 and 1000.138 through a self-insurance plan, approved by HUD in accordance with this section, provided by a nonprofit insurance entity that is wholly owned and controlled by IHBG recipients.

(b) *Self-insurance plan.* An Indian housing self-insurance plan must be shown to meet the requirements of paragraph (c) of this section.

(c) *Application.* For a self-insurance plan to be approved by HUD, an application and supporting materials must be submitted containing the information specified in paragraphs (c)(1) through (c)(9) of this section. Any material changes made to these documents after initial approval must be submitted to HUD. Adverse material changes may cause HUD to revoke its approval of a self-insurance entity. The application submitted to HUD must show that:

(1) The plan is organized as an insurance entity, tribal self-insurance plan, tribal risk retention group, or Indian housing self-insurance risk pool;

(2) The plan limits participation to IHBG recipients;

(3) The plan operates on a nonprofit basis;

(4)(i) The plan employs or contracts with a third party to provide competent underwriting and management staff;

(A) The underwriting staff must be composed of insurance professionals with an average of at least five years of experience in large risk commercial underwriting exceeding \$100,000 in annual premiums or at least five years of experience in underwriting risks for public entity plans of self-insurance;

(B) The management staff must have at least one senior manager who has a minimum of five years of insurance experience at the level of vice president of a property or casualty insurance entity; as a senior branch manager of a branch office with annual property or casualty premiums exceeding five million dollars; or as a senior manager of a public entity self-insurance risk pool;

(ii) Satisfaction of this requirement may be demonstrated by evidence such as résumés and employment history of the underwriting staff for the plan and of the key management staff with day-to-day operational oversight of the plan;

(5) The plan maintains internal controls and cost containment measures, as shown by the annual budget;

(6) The plan maintains sound investments consistent with its articles of incorporation, charter, bylaws, risk pool agreement, or other applicable organizational document or agreement concerning investments;

(7) The plan maintains adequate surplus and reserves, as determined by HUD, for undischarged liabilities of all types, as shown by a current audited financial statement and an actuarial review conducted in accordance with paragraph (e) of this section;

(8) The plan has proper organizational documentation, as shown by copies of the articles of incorporation, charter, bylaws, subscription agreement, business plan, contracts with third-party administrators, and other organizational documents; and

(9) A plan's first successful application for approval under this section must also include an opinion from the plan's legal counsel that the plan is properly chartered, incorporated, or otherwise formed under applicable law.

(d) *HUD consideration of plan.* HUD will consider an application for approval of a self-insurance plan submitted under this section and approve or disapprove that application no later than 90 days from the date of receipt of a complete application. If an application is disapproved, HUD shall notify the applicant of the reasons for disapproval and may offer technical assistance to a recipient to help the recipient correct the deficiencies in the application. The recipient may then resubmit the application under this section.

(e) *Annual reporting.* An approved plan must undergo an audit and actuarial review annually. In addition, an evaluation of the plan's management must be performed by an insurance professional every three years. These audits, actuarial reviews, and management reviews must be submitted to

HUD within 90 days after the end of the insuring entity's fiscal year and be prepared in accordance with the following standards:

(1) The annual financial statement must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent auditor in accordance with generally accepted government auditing standards. The independent auditor shall state in writing an opinion on whether the plan's financial statement is presented fairly, in accordance with GAAP;

(2) The actuarial review of the plan shall be done consistently with requirements established by the Association of Governmental Risk Pools and conducted by an independent property or casualty actuary who is a member of a recognized professional actuarial organization, such as the American Academy of Actuaries. The report issued and submitted to HUD must include the actuary's written opinion on any over- or under-reserving and the adequacy of the reserve maintained for open claims and for incurred but unreported claims;

(3) The management review must be prepared by an independent insurance consultant who has received the professional designation of a chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), and must cover the following:

(i) The efficiency of the management or third-party administrator of the plan;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance or excess insurance coverage.

(f) *Revocation of approval.* HUD may revoke its approval of a plan under this section when the plan no longer meets the requirements of this section. The plan's management will be notified in writing of the proposed revocation of its approval and of the manner and time in which to request a hearing to challenge the determination, in accordance with the dispute resolution procedures set forth in this part for model housing activities (§1000.118).

(g) *Preemption.* In order that tribally owned Indian housing insurance entities that provide insurance for IHBG-assisted housing will not be subject to conflicting state laws and widely varying and costly requirements, any self-insurance plan under this section that meets the requirements of this section and that has been approved by HUD shall be governed by the regulations of this subpart in its provision of insurance for IHBG-assisted housing.

[72 FR 29740, May 29, 2007]

**§ 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?**

Yes. All purchases of insurance must be in accordance with §§1000.136 and 1000.138.

**§ 1000.142 What is the “useful life” during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?**

Each recipient shall describe in its IHP its determination of the useful life of each assisted housing unit in each of its developments in accordance with the local conditions of the Indian area of the recipient. By approving the plan, HUD determines the useful life in accordance with section 205(a)(2) of NAHASDA and for purposes of section 209.

**§ 1000.144 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?**

No.

**§ 1000.146 Are homebuyers required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?**

No. The low-income eligibility requirement applies only at the time of purchase. However, families purchasing housing under a lease purchase agreement who are not low-income at the time of purchase are eligible under § 1000.110.

**§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?**

(a) As required by section 208 of NAHASDA, the National Crime Information Center, police departments, and other law enforcement agencies shall provide criminal conviction information to Indian tribes and TDHEs upon request. Information regarding juveniles shall only be released to the extent such release is authorized by the law of the applicable state, Indian tribe or locality.

(b) For purposes of this section, the term “*tenants*” includes homebuyers who are purchasing a home pursuant to a lease purchase agreement.

**§ 1000.152 How is the recipient to use criminal conviction information?**

The recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening, lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

**§ 1000.154 How is the recipient to keep criminal conviction information confidential?**

(a) The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in § 1000.150 in files separate from all other housing records.

(b) These criminal conviction records will be kept under lock and key and be under the custody and control of the recipient's housing executive director/lead official and/or his designee for such records.

(c) These criminal conviction records may only be accessed with the written permission of the Indian tribe's or TDHE's housing executive director/lead official and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and these regulations.